

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,

v.

FRED T. CALDWELL,

Defendant.

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Case No. 0207018104B

Submitted: April 22, 2020

Decided: June 11, 2020

ORDER

Upon Defendant's Motion for Modification of Sentence

Granted in Part; Denied in Part.

Stephen R. Welch, Jr., Esquire of the Department of Justice, Dover, Delaware;
attorney for the State of Delaware.

Anthony J. Capone, Esquire, Office of the Public Defender, Dover, Delaware;
attorney for the Defendant.

WITHAM, R.J.

Before the Court are Defendant's Motion for Modification of Sentence and the State's Answer in Opposition. The Court carefully considered the parties' submissions, examined the applicable legal authority, and reviewed the record of this case. It appears to the Court that:

1. On December 16, 2019, Defendant was resentenced in case ID number 0207018104, which originally resulted in a life sentence.¹ He was sentenced to life in prison on December 10, 2003.² After the resentencing, he was placed in Department of Correction ("DOC") custody for thirty-five years, suspended after twenty years at supervision Level V, followed by a lower level of supervision as to RK02-11-0188-05.³ He was also placed in DOC custody for thirty-five years, suspended after four years at supervision Level V, followed by a lower level of supervision for RK02-11-0189-05.⁴ The fine of \$50,000 was also imposed at the resentencing and was suspended.⁵ The fees, costs, and charges associated with the fine were not suspended and amounted to an additional \$16,500.

2. On July 29, 2002, prior to his life sentence, Defendant was sentenced to two years Level V Key program and two years of Level V supervision for Violations of Probation ("VOP") in cases ID numbers 9804006339 and 9807006121.⁶ The VOP

¹ See Defendant's Motion for Modification of Sentence ("Def. Mot.") ¶ 1.

² See *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.* at ¶ 2. The fine was not imposed at the original sentencing.

⁶ *Id.* at ¶ 5.

sentences had an effective day of June 24, 2002.⁷ Defendant also had another two-year sentence originally imposed in 2003 for the charge of Conspiracy in the Second Degree.⁸ The later life sentence had to be served consecutive to other sentences Defendant was serving at the time.⁹ Therefore, it appears that Defendant would begin his life sentence in 2008 after he completed the VOP and the Conspiracy sentences. However, the Offender Status Sheet, dated February 24, 2020, removed the original Conspiracy sentence because no jail time was imposed for it at the resentencing and indicated that the VOP sentences were not, in fact, completed.¹⁰ Instead, the VOP sentences were interrupted in 2003 when Defendant started serving his life sentence and were supposed to resume after Defendant served his modified habitual offender sentence of twenty-four years at Level V imposed by the Court in 2019.¹¹

3. At the Habitual Offender Resentencing, Defendant's VOP sentences were briefly discussed.¹² It was discussed that they *were completed* except for the Key program.¹³ The Modified Sentencing Order indicated that the life sentence that began on December 10, 2003 was modified to a total of twenty-four years of Level V supervision, and it was to run consecutive to any sentences Defendant was

⁷ State's Answer to Motion for Sentence Modification ("St. Mot.") ¶ 4.

⁸ *Id.* at ¶ 3.

⁹ *Id.* at ¶ 4.

¹⁰ *Id.* at ¶ 8.

¹¹ *Id.* at ¶ 8.

¹² Def. Mot. ¶ 6.

¹³ *Id.* It was also discussed that the Key program was not completed because of Defendant's later imposed life sentence.

serving.¹⁴

4. Defendant first argues that it would be appropriate and in the interest of justice to remove the fees associated with the \$50,000 fine that was imposed on him at the resentencing.¹⁵ Defendant also asks the Court to resolve the tension or any confusion in the sentence by ordering that the VOP sentences run concurrently with the sentences originally imposed on Defendant in 2003 and later modified in 2019.¹⁶ Defendant believes that such adjustment would be consistent with the Court's intent as expressed in the 2019 Modification Order.¹⁷

5. The State argues that Defendant's Motion is procedurally barred because he may file only one application for sentence modification.¹⁸ The State believes that further sentence modification here is inappropriate given the fact that the VOP sentences Defendant did not complete are not related to his modified habitual offender sentence.¹⁹ The State contends that nothing in this case justifies an additional reduction of Defendant's sentence.²⁰ The State is technically correct. The State, however, does not oppose the removal of the fees associated with the \$50,000 fine in the interest of justice.²¹

¹⁴ Def. Mot. Ex. A. p. 3.

¹⁵ Def. Mot. ¶ 4.

¹⁶ *Id.* at ¶ 10.

¹⁷ *See Id.*

¹⁸ State's Answer to Motion for Sentence Modification ("St. Answer") ¶ 6.

¹⁹ *See Id.*

²⁰ *Id.* at ¶ 11.

²¹ *Id.* at ¶ 16.

6. A person sentenced as a habitual offender to life in prison prior to July 19, 2016, is eligible to petition the Superior Court for sentence modification after the person has served the time equal to an applicable mandatory sentence.²² “The Superior Court's review of any petitions filed pursuant to this subsection shall include a review of the applicant's prior criminal history, including arrests and convictions, a review of the applicant's conduct while incarcerated, and available evidence as to the likelihood that the applicant will reoffend if released, including a formal, recent risk assessment.”²³

7. Typically, a petitioner may only file one application for sentence modification under 11 *Del. C.* § 4214(f).²⁴ Furthermore, Superior Court Criminal Rule 35(b) provides that: “[t]he court will not consider repetitive requests for reduction of sentence.”²⁵ However, despite the fact that Defendant filed a Motion for Modification of Sentence in this case, a simple clarification of the previous Modified Sentencing Order is more appropriate. Here, at the time of the Sentence Modification Hearing, the Court had the impression that Defendant already completed his VOP sentences imposed in 2002. Because confusion as to the VOP sentences exists on the record, the Court finds it suitable to address and resolve the conflict in a manner consistent with the Court’s original intent and sentence modification.

8. The Court does not treat this Motion as a repetitive request for a sentence

²² 11 *Del. C.* § 4214(f).

²³ *Id.*

²⁴ *Id.*

²⁵ *State v. Deshields*, 2017 WL 773492, at *2 (Del. Super. Jan. 26, 2017).

State v. Fred T. Caldwell


I.D. No. 0207018104B

June 11, 2020

reduction under the circumstances. After a careful review of the Investigative Services Office Report, ordered by the Court, it appears to the Court that Defendant did not complete the full term of his VOP sentences imposed in 2002 prior to beginning his life sentence imposed in 2003. It was the Court's intent for Defendant to serve twenty-four years of Level V supervision as the remainder of his incarceration. Therefore, the remainder of the VOP sentences shall run concurrently with the remainder of Defendant's modified habitual offender sentence. The 2019 Modified Sentencing Order remains in effect, except that Defendant's modified habitual sentence for case ID number 0207018104 will run concurrently with the remaining portion of his VOP sentences case ID numbers 9804006339 and 9807006121 imposed in 2002. Furthermore, the fees associated with Defendant's suspended \$50,000 fine are removed.

9. For the reasons mentioned above, the previous Modified Sentencing Order remains in effect but is supplemented by this Order. The Court will issue an amended order implementing changes as noted herein.

IT IS SO ORDERED.



Hon. William L. Witham, Jr.
Resident Judge

WLW/dmh

oc: Prothonotary

cc: Stephen R. Welch, Jr., Esquire
Anthony J. Capone, Esquire